

UT 00-1

Tax Type: Use Tax

Issue: Occasional Sales – Non-Retail Transactions Exempt

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 98-ST-0000
v.)	IBT # 0000-0000
)	NTL # 00000000000000
“ARTHUR TREACHER”,)	
)	Barbara S. Rowe
Taxpayer)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mark Thielen of Scott & Scott for “Arthur Treacher”; Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois.

Synopsis:

The Illinois Department of Revenue (hereinafter the “Department”) issued a Notice of Tax Liability (NTL) to “Arthur Treacher” (hereinafter the “taxpayer”) for use tax owed on the purchase of an airplane. The taxpayer timely protested the NTL and a hearing was held where the taxpayer raised the following issues: (1) whether the purchase qualifies for the occasional sale exemption to the Use Tax Act and (2) whether the Department used the correct purchase price to calculate the tax. After reviewing the record, it is recommended that the imposition of the tax be upheld and that the amount be reduced to reflect a purchase price of \$140,000.00.

FINDINGS OF FACT:

1. On June 13 1995, the taxpayer purchased a 1967 Beech 65-A90 aircraft. The Bill of Sale provided by the Federal Aviation Administration to the Department indicates that “PDQ Aircraft, Inc.”, “John Doe”, president and co-owner, and “Richard Roe”, co-owner, were the sellers of the plane. The taxpayer did not pay use tax on the purchase of the plane. (Taxpayer Ex. #1; Dept. Ex. # 2; Tr. p. 7)

2. At the time of the sale, the taxpayer, as a sole proprietorship, operated “Lookout Below Skydiving School” in “Somewhere”, Illinois. The taxpayer had been in the skydiving business for 34 years and had bought and sold three or four airplanes during that time period. (Tr. pp. 7, 21, 36)

3. The sellers of the aircraft are located in (Another State). At the time of the sale they were registered with the (Another State’s) State Tax Commission as dealers of aircraft. (Tr. pp. 8-9)

4. The Department determined the selling price for purposes of calculating the tax owed by using the fall 1995 aircraft blue book price digest, which showed a fair market value of \$295,000 for this aircraft. (Tr. pp. 7, 10)

5. The Department issued a corrected tax return to the taxpayer showing Illinois use tax due in the amount of \$18,438.00 based upon the blue book price of the aircraft, \$295,000.00. A copy of the corrected return was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

6. The taxpayer negotiated a loan with the First national Bank of “Somewhere”, Illinois for the purchase of the airplane. The loan was for \$140,000.00. (Taxpayer's Ex. Nos. 1,2,4)

CONCLUSIONS OF LAW:

The Use Tax Act (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. “Retailer” includes every person engaged in the business of making sales at retail. 35 ILCS 105/2. “Retailer” does not include an individual who only engages in isolated or occasional sales of tangible personal property. *Id.*

Section 12 of the Use Tax Act incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Correction of Return issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 35 ILCS 120/4. Once the Department has established its *prima facie* case by submitting the corrected return into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the accuracy of the Department's assessment. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991). The taxpayer must present sufficient documentary evidence to support its claim for an exemption. *Id.*

The taxpayer contends that he does not owe the tax because the sellers only occasionally sold airplanes. This argument is not persuasive. The taxpayer testified that when he went to look at the plane one of the sellers told him that he was in the business of selling aircraft parts; so the taxpayer was on notice that the seller was a retailer. (Tr. p. 23) The taxpayer contends that he purchased the aircraft from Mr. “Doe”; however, the bill of sale, which is signed by the taxpayer, reflects that the seller is “PDQ Aircraft, Inc.”

There is no exception to the application of use tax if the purchaser bought tangible personal property from a retailer but did not know the seller was a retailer or did not intend to buy from a retailer. Whether the seller is a retailer is a factual matter and the purchaser's intent does not change the facts. I therefore conclude that use tax is due on the purchase of the aircraft at issue.

Regarding the cost of the airplane, the taxpayer asserted that the purchase price of the plane was \$140,000.00 and produced the loan agreement, worksheets of the bank, and a copy of the cashier's check issued to the sellers in support of that argument. He testified that no additional money or services were incurred in the purchase.

I find the testimony of the taxpayer credible regarding the purchase price of the aircraft. In addition, he questioned why the Department didn't ask the sellers the amount of the purchase price when they were corresponding with them about this matter, instead of using the blue book price. (Tr. p. 31) The aircraft bill of sale did not reflect a purchase price.

Recommendation:

For the foregoing reasons, it is recommended that that the NTL be upheld and reduced to reflect the purchase price of \$140,000.00.

Respectfully Submitted,

Date 1/12/00

Barbara S. Rowe
Administrative Law Judge